

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
) File No.: EB-11-AT-0007
US Jetting, Inc.)
) NAL/Acct. No.: 201232480001
Alpharetta, Georgia)
) FRN: 0020688966

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: January 20, 2012

Released: January 20, 2012

By the District Director, Atlanta Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find US Jetting, Inc. (US Jetting) apparently liable for a forfeiture in the amount of eight thousand four hundred dollars (\$8,400) for its apparent willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (Act),¹ and Sections 2.803(a)(1) and 15.201(b) of the Commission's rules (Rules).² The noted apparent violations involve US Jetting's marketing of radio frequency devices in the United States prior to obtaining Commission authorization for such devices. Further, we order US Jetting to submit a statement signed under penalty of perjury by an officer or director of the company stating that it is no longer marketing unauthorized radio frequency devices in the United States.

II. BACKGROUND

2. On January 25, 2011, agents from the Enforcement Bureau's Atlanta Office (Atlanta Office), accompanied by US Jetting's President, inspected US Jetting's store in Alpharetta, Georgia in response to a complaint. The agents observed that US Jetting was marketing³ in the United States an intentional radiator⁴ with a US Jetting label but no FCC equipment authorization label. Specifically, US Jetting was marketing a wireless handheld remote controller for its high-pressure water jetting equipment. US Jetting's President admitted that: (a) the company assembled the device; (b) the device was not certified; and (c) the company had sold the device to end users. The agents verbally warned him that he was prohibited from selling the remaining inventory of the device. According to Commission records, the agents

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a)(1), 15.201(b).

³ See 47 C.F.R. § 2.803(e)(4) (defining marketing as including "sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease").

⁴ See 47 C.F.R. § 15.3 (defining "intentional radiator" as a "device that intentionally generates and emits radio frequency energy by radiation or induction").

confirmed that the radiator, a wireless handheld remote controller for US Jetting's high-pressure water jetting equipment, had not been certified by the Commission.

3. On March 10, 2011, the Atlanta Office issued a letter of inquiry (LOI) to US Jetting.⁵ The LOI directed US Jetting to respond to a series of questions regarding its apparent marketing of an intentional radiator prior to obtaining FCC authorization for the device.⁶ US Jetting responded to the LOI, admitting that it began manufacturing the wireless handheld remote controller in its Alpharetta facility in June 2010, after the previous manufacturer discontinued manufacturing the device.⁷ US Jetting also stated that it discontinued manufacturing the device in February 2011.⁸ US Jetting admitted that it marketed about 75 units of the device between 2009 and 2011 and that they were mostly sold to consumers of the US Jetting water jetting equipment.⁹

III. DISCUSSION

4. Section 503(b) of the Act¹⁰ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹¹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Section 312 and 503(b) of the Act¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹⁵

⁵ See Letter from Douglas Miller, District Director, Atlanta Office, to Nick Woodhead, President, US Jetting, Inc., dated March 10, 2011.

⁶ *Id.*

⁷ See Letter from Nick Woodhead, President, US Jetting, Inc., to Douglas Miller, District Director, Atlanta Office, dated April 26, 2011 at 1-2 (*LOI Response*).

⁸ *Id.*

⁹ *LOI Response* at 3.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 U.S.C. § 312(f)(1).

¹² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in Section 312] defines the terms 'willful' and 'repeated' for purposes of Section 312, and for any other relevant section of the act (e.g., Section 503).... As defined ... 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission's application of those terms ...").

¹³ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁴ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (proposing a forfeiture for, *inter alia*, a cable television operator's repeated signal leakage).

¹⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the

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A. Marketing of Devices Without the Required Commission Authorization

5. Pursuant to Section 302(b) of the Act, “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”¹⁶ Section 15.201(b) of the Rules requires intentional radiators operating above 490 kHz, to be certificated by the Commission.¹⁷ For a device subject to certification, Section 2.803(a)(1) of the Rules provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless...in the case of a device subject to certification, such device has been authorized by the Commission...and is properly identified and labeled....¹⁸

6. On January 25, 2011, agents from the Atlanta Office observed US Jetting offering for sale a wireless handheld remote controller in its Alpharetta store. The device is an intentional radiator that emits RF energy on the frequency 315 MHz and thus must be certified by the Commission.¹⁹ US Jetting admitted that it began manufacturing the wireless handheld remote controller device in June 2010 and that it offered for sale and sold the device for a period of two years, lasting from 2009 until 2011. At the time of the inspection, US Jetting had not received an equipment authorization from the Commission for this device or any wireless handheld remote controllers. Based on the evidence before us, we find that US Jetting apparently willfully and repeatedly violated Section 302(b) of the Act and Sections 2.803(a)(1) and 15.201(b) of the Rules by marketing and selling unauthorized radio frequency devices.

B. Proposed Forfeiture

7. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for the importation or marketing of unauthorized equipment is seven thousand dollars (\$7,000).²⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²¹ Because US Jetting marketed and sold unauthorized radio frequency devices for a period of two years, we conclude an upward adjustment in forfeiture in the amount of \$1,400 is appropriate. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that US Jetting is apparently liable for a \$8,400 forfeiture for marketing one model of an unauthorized radio frequency

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commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹⁶ 47 U.S.C. § 302a(b).

¹⁷ 47 C.F.R. § 15.201(b). Certification “is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant.” 47 C.F.R. § 2.907.

¹⁸ 47 C.F.R. § 2.803(a)(1).

¹⁹ 47 C.F.R. § 15.201(b).

²⁰ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²¹ 47 U.S.C. § 503(b)(2)(E).

device in the United States.²²

8. We order US Jetting to submit a written statement pursuant to Section 1.16 of the Rules²³ signed under penalty of perjury by an officer or director of the company stating that it is no longer marketing the unauthorized wireless handheld controller and describing the disposition of the remaining inventory of the device. This statement must be provided to the Enforcement Bureau at the address listed in paragraph 13 within thirty (30) calendar days of the release date of this *NAL*.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, US Jetting, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand four hundred dollars (\$8,400) for violation of Section 302(b) of the Act and Sections 2.803(a)(1) and 15.201(b) of the Commission's rules.²⁴

10. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, US Jetting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. **IT IS FURTHER ORDERED** that US Jetting, Inc. **SHALL SUBMIT** a written statement under penalty of perjury as described in paragraph 8 to the Enforcement Bureau Office listed in paragraph 13 within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

12. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.⁸ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. US Jetting shall send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

13. The written statement seeking reduction or cancellation of the proposed forfeiture, if any,

²² See 47 C.F.R. § 1.80. See also *SmartLabs, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 7780 (Enf. Bur. 2011) (establishing base forfeiture amount of \$7,000 for marketing one model of an unauthorized device).

²³ 47 C.F.R. § 1.16.

²⁴ 47 U.S.C. §§ 302a(b), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 2.803(a)(1), 15.201(b).

⁸ See 47 C.F.R. § 1.1914.

must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules.²⁵ The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd; Suite 320, Duluth, GA 30096, and must include the NAL/Acct. No. referenced in the caption. The statement should also be emailed to SCR-Response@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to US Jetting, Inc. at 850 McFarland Pkwy, Alpharetta, GA 30004.

FEDERAL COMMUNICATIONS COMMISSION

Douglas Miller
District Director
Atlanta Office
South Central Region
Enforcement Bureau

²⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).